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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAYS'S BANK (UGANDA) LIMITED,

Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZER, copartners doing business as J. ZEEVI & SONS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS IN OPPOSITION

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August 4, 1975.

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Questions Presented

Respondents disagree with petitioner's statement of the questions sought to be presented. Respondents' difference arises from the fact that the petition, in purporting to state the questions presented, assumes by implication, and in some instances affirms outright, facts which the record does not support. An additional difference is that the petition purports to raise a number of questions beyond those raised and determined in the state courts.

Respondents submit the following as a true statement of the questions presented:

1. On the threshold issue raised by petitioner of subject-matter jurisdiction in the state court, that jurisdiction at bar derives from New York Banking Law §200-b(2), subd. (a)(c) and (d).* Banking Law §200-b(2) authorizes an action to be maintained in the state courts against a foreign banking corporation by another foreign corporation or a nonresident, in the following specified cases among others: (1) where the contract sued upon was "to be performed" within the state; (2) where the cause of action "arose" within the state; or (3) where the action "is based on a liability for acts done" within the state by the defendant foreign banking corporation. Any one of these enumerated grounds for subject-matter jurisdiction is alone sufficient.

The New York Court of Appeals in the present case held squarely that the cause of action sued upon "arose" within the State of New York. It further found that the provision of the contract of irrevocable letter of credit sued upon called for performance by reimbursement in New York, as "an integral part of that for which the parties bargained", and not as a "discrete obligation". It similarly found that the liability sued upon was for acts done within the state by the petitioner foreign banking corporation. These were all questions having to do with the correct interpretation as a matter of state law of the state statutes before the court, as to which questions the highest state court's determinations based on those statutes would be final and conclusive. The only contentions that might then survive the holdings by the New York Court of Appeals with respect to those state law matters was petitioner's claim, if

* Also, from Business Corporation Law, §1314(b), similarly worded.

properly advanced, that the state statutes in question violated the provisions of the United States Constitution, specifically, the Due Process clause of the Fourteenth Amendment. Assuming that that issue had been properly raised in the state courts, that would be the narrow scope of the question of subject-matter jurisdiction that might then be raised in this Court.

2. The New York Court of Appeals, faced with the threshold question of "choice of law" as the basis for its decision on the merits, chose the New York law over the Uganda law as the law that "should be accorded paramount control over the legal issues presented." Though petitioner seeks to cite that as a question presented for possible review by this Court, respondents submit that that is purely a question of state and not of federal law.

3. The New York Court of Appeals held that enforcement of the letter of credit contract in suit did not in any way violate the Bretton Woods Agreement, 60 Stat. 1401 et seq., specifically Article VIII, Section 2(b) thereof. The question presented is whether on the facts at bar this determination was correct.

4. The New York Court of Appeals ruled that the act of state doctrine invoked by petitioner did not apply on the facts of this case, since here the debt attached was "located" in the territorial limits of the State of New York, and not within the territorial limits of the Country of Uganda. The question is whether this determination by the Court of Appeals was correct, since decision under the act of state doctrine turns precisely on the question whether the property which will be affected by the judgment is within the territory of the foreign government or within the territorial limits of the forum state.

Constitutional Provisions, Treaty and Statutes Involved

Respondents do not differ with petitioner as to the Constitutional Provisions, Treaty and Statutes involved, except that it may be doubted that petitioner, before the state courts or even in the present petition, has raised any question of the supposed unconstitutionality of the cited provisions of the New York Banking Law or Business Corporation Law as enacted or applied.

Statement

Respondents disagree with the statements of the case contained in the petition. Respondents submit that the following is a correct statement of the facts as they appear in the record:

On March 24, 1972, Hiram Zeevi & Company (Uganda) Ltd., an Israeli corporation, deposited with Grindlays Bank (Uganda) Ltd., local currency valued at approximately $406,846.80 (R. 109),* for the purpose of establishing a fund upon which respondent, J. Zeevi and Sons, an Israeli copartnership, could draw money (R. 110). On the same date, respondent opened its irrevocable credit No. 110/84 for $406,846.80 in favor of that copartnership and issued a letter of credit acknowledging that it had opened the irrevocable credit for "$406,846.80 (U.S. dollars four hundred and six thousand eight hundred and forty-six, cents eighty)" (A29), and providing that the credit amount be

* Numbers in parentheses prefixed by the letter "A" refer to pages of the appendix to the petition. Numbers in parentheses prefixed by the designation "Resp. App." refer to pages of the appendix to this brief in opposition. Numbers in parentheses prefixed by the letter "R." refer to pages of the printed record in the state court.

available against clean drafts drawn on the depositor in equal amounts of $40,684.68 commencing April 15, 1972, and monthly thereafter (*ibid*). The letter of credit concluded with these provisions (A30):

> "We guarantee the payment of drafts drawn in conformity with the terms and conditions stated. * * *
>
> The negotiating bank is authorized to claim reimbursement for their payments on the due dates listed above from First National City Bank, 399 Park Avenue, New York to the debit of our account with them together with a certificate to the effect that all terms of the credit have been complied with and the relative drafts have been air-mailed to us."

On April 4, 1972, petitioner advised its New York agent, First National City Bank, above referred to, of the issuance of the letter of credit numbered 110/84 (R. 167).

Thereafter, on April 14, 1972, by cable dated and received April 14, 1972, and confirmatory letter dated April 17, 1972, petitioner advised its New York agent, the First National City Bank, that the Government of Uganda had instructed it to "cancel" the letter of credit "No. 110/84 dated 24-3-1972 favouring J. Zeevi & Sons Haifa Israel for US 406846-80", and directed the First National City Bank "not to effect payment of drawing thereunder" (Resp. App. 1).

A letter dated May 5, 1972 from petitioner stated (Resp. App. 2):

> "In the circumstances we have had no option but to instruct our agents in New York not to effect reimbursement of the drawing due to be made on 15.5.1972 without further reference to us."

On December 28, 1972, Chemical Bank presented to the First National City Bank for reimbursement ten drafts each for $40,684.68 totalling $406,846.80 drawn under letter of credit 110/84, and on January 11, 1973, Chemical wrote to the First National City Bank that "we are again presenting our domestic collection R92049 in the amount of $406,846.80 under irrevocable credit 110/84, reimbursable on your good selves * * * as per the terms and conditions thereof." (R. 56). On January 19, 1973, the First National City Bank returned the subject drafts unpaid to Chemical (R. 58).

The present action by the copartnership, the beneficiary of letter of credit 110/84, and by J. Zeevi and Sons, Ltd., the assignee of that partnership, was commenced by an order of attachment issued out of the Supreme Court, New York County, on November 24, 1972, service of a copy of that order on the First National City Bank in New York City as garnishee, and levy pursuant to the order made by the New York City Sheriff upon funds of petitioner on deposit with the First National City Bank (R. 1). The obtaining thereby of *in rem* or *quasi in rem** jurisdiction against petitioner was completed by service by publication of a copy of the summons and complaint in the action upon petitioner pursuant to order of the Court issued for such service by publication.

Petitioner thereafter moved to dismiss the complaint for claimed lack of subject-matter jurisdiction (R. 7-13). On that motion, petitioner raised no question as to the legal sufficiency of the levy of attachment itself, which constituted the basis for the underlying *in rem* jurisdic-

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* We shall follow the practice indicated by this Court in *Hanson* v. *Denckla*, 357 U.S. 235 (1958), footnote p. 246, and for "convenience of terminology" use "*in rem*" in lieu of "*in rem*" and "*quasi in rem.*"

tion, and no question as to the legal sufficiency of the service by publication made pursuant to order of the Court issued therefor. Therefore, these questions as to the legal sufficiency, as such, either of the levy under the order of attachment, or the subsequent service of process by publication, must be deemed outside the scope of the present petition.*

The motion to dismiss for supposed lack of subject-matter jurisdiction was duly denied by the New York County Trial Term, and that denial thereafter on June 21, 1973, duly affirmed by the Appellate Division, First Judicial Department, and subsequently by the New York Court of Appeals (A15-A17, R. 195-196, A1-A9).

Thereafter, the Supreme Court, New York County, granted on motion of plaintiff J. Zeevi and Sons, Ltd. partial summary judgment on the first cause of action in the complaint (that based on irrevocable letter of credit 110/84), and directed entry of judgment in favor of that plaintiff. The Appellate Division of the Supreme Court unanimously affirmed, and on subsequent appeal, the New York Court of Appeals likewise unanimously affirmed (A1-A12).

Argument

The decision below is clearly correct.

The federal questions surviving the determination of the New York Court of Appeals are few in number and most narrow in scope. None involve a decision by the state courts determining a federal question of substance not heretofore decided by this Court. None involve a decision by the state courts in any way at odds with

* Notwithstanding, those questions will be treated in this brief in opposition. See, pp. 13-14, *infra*.

applicable decisions of this Court. All present issues of law already fully and conclusively adjudicated by this Court and not warranting from any standpoint, whether of public or private importance, review by this Court on certiorari.

I.

The Decision Below is Clearly Correct.

A.

Petitioner contends in its petition as a threshold question that the complaint should have been dismissed by the state court for lack of subject-matter jurisdiction (Pet. 3, 12-16). But this, as shall be shown, was solely a question of state law and not of federal law.

New York Civil Practice Law and Rules provides in Article 62, Sections 6201 *et seq.*, for attachment of a foreign corporation's property within the territorial limits of the state as a basis for obtaining jurisdiction over that foreign corporation *in rem* (CPLR 6201). Section 6202 specifies a "debt" as a form of property that may be so attached. Section 6213 provides for completion of the *in rem* jurisdiction by service by publication upon the defendant foreign corporation pursuant to an order of the court obtained therefor.

At bar, all the foregoing was duly accomplished, and at no stage of this litigation in the state courts did petitioner raise any question as to the legal sufficiency of the steps taken by respondents to obtain such *in rem* jurisdiction in the manner provided for in the state statutes.

However, the State of New York, acting through its legislature, has chosen to limit itself in the matter of the jurisdiction it will exercise where a litigation involves a defendant foreign banking corporation or foreign non-

banking corporation sued by another foreign corporation or a nonresident person. Thus, Subdivision 2 of section 200-b of the Banking Law, entitled "**Actions maintained against foreign banking corporation; residents; foreign corporations, foreign banking corporations as nonresidents,**" provides in part:

> "2. Except as otherwise provided in this chapter, an action * * * against a foreign banking corporation may be maintained by another foreign corporation or foreign banking corporation or by a nonresident in the following cases only:
>
> (a) where the action is brought to recover damages for the breach of a contract * * * to be performed within this state * * *;
>
> * * * * *
>
> (c) where the cause of action arose within this state;
>
> (d) where the action * * * is based on a liability for acts done within this state by a foreign banking corporation; * * *."

Subdivision (b) of section 1314 of the Business Corporation Law contains almost identical language. (Business Corporation Law §1314(b), in turn, was derived from New York General Corporation Law, Section 225, having substantially similar provisions.)

It is to be noted that Banking Law §200-(b)(2) and Business Corporation Law §1314(b) do not come into operation unless and until jurisdiction sufficient to satisfy due process requirements already exists, either *in personam* or *in rem*. (See, on this precise point, *Simonson* v. *International Bank*, 14 N.Y. 2d 281, 285 (1964), where the underlying jurisdiction was lacking either *in personam* or *in rem*.) Then, even where due process jurisdiction exists,

the state sovereignty, acting through its state courts in interpretation of the two statutes involving suits against foreign corporations above referred to, decides whether or not it will entertain the litigation in its courts. This, however, is a matter of self-imposed restraint and self-limitation, reflecting solely New York State's own policy "against lending its courts to the resolution of disputes between non-resident parties", except as provided in the statute (*Simonson* v. *International Bank*, 14 N.Y. 2d 281 [1964], at p. 285). It is thus not in the least a question of federal constitutional law, whether arising under the federal Due Process clause or any other.

When, therefore, in the case at bar, the New York Court of Appeals, interpreting Banking Law §200-b(2) and Business Corporation Law §1314(b), held that the facts established a cause of action arising within the state, and that on that basis the action would be permitted to be maintained, it was deciding a question solely of state law and not at all a question of federal law, specifically, not a question arising under the federal Due Process clause.

Before the state courts, petitioner had argued merely that respondent did not bring its suit within the provisions of Banking Law §200-b(2) (a)(c) and (d) and Business Corporation Law §1314(b), contending (a) that the "alleged cause of action did not arise in New York", (b) that the contract of guarantee "was not to be performed in New York", (c) that the First National City Bank account "was not designated as the source of payment to plaintiff", and (d) that it was "not true" that the claim in suit was "predicated on a liability for acts done within this state" by petitioner (Pet. Reply Brief in New York Court of Appeals, pp. 2-5). The New York Court of Appeals overruled all these contentions, however, holding as had the Appellate Division and Trial Court previously, that the facts of the case established a cause of action "occurring

within New York" within the meaning of the above-quoted Banking Law Section 200-b(2)(c) (A5). Thus, on this precise point the Court of Appeals found that in irrevocable credit 110/84,

> "defendant contracted to pay upon compliance with its terms (*Lamborn* v. *National Park Bank of New York, supra,* at p. 525) and defendant's order countermanding payment by cable and letter took effect upon receipt by Citibank in New York and then gave rise to a cause of action here (*Gonzalez* v. *Industrial Bank (of Cuba),* 12 N Y 2d 33, 38). Citing *Hibernia Nat. Bank* v. *Lacombe* (84 N.Y. 367), this court stated in *Gonzalez* that 'a cause of action arises where that is done which should not be done.' In this instance, New York was the locus of repudiation, whereas it should have been a site of payment."

This ruling was, of course, fully supported by the record (see, pages 4-6, *supra*).

Overruling petitioner's contention made before it that the provision respecting reimbursement by the First National City Bank in New York was a wholly separate, "gratuitous" and inessential part of the irrevocable letter of credit, the Court of Appeals stated (A5-A6):

> "The provision respecting reimbursement in New York was an integral part of that for which the parties bargained, it was not a discrete obligation. The separate character of defendant's undertakings is negated by its guarantee of payment of drafts. The value to those in commerce of having a place at a financial capital where funds can be obtained on a simple letter of credit, away from a relatively small bank in an undeveloped country of uncertain political stability, is

obvious. The reimbursement provision is quite essential, economically, to the total arrangement since a promisee would be unwilling to present a draft based on a letter of credit, in dollar terms, to a commercial house in the United States and then be required to wait a relatively inordinate time for the money to come from a remote source."

In another portion of its opinion, the Court stated (A6-A7):

> "New York * * * is a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions, such as to be so recognized by our decisional law (*Intercontinental Planning* v. *Daystrom, supra,* at pp. 383-384). A vast amount of international letter of credit business is cusomarily handled by certain New York banks whose facilities and foreign connections are particularly adaptable to this field of operation (34 N Y Jur., Letters of Credit, §10, p. 427). The parties, by listing United States dollars as the form of payment, impliedly accepted these facts and set up procedures to implement their trust in our policies. In order to maintain its preeminent financial position, it is important that the justified expectations of the parties to the contract be protected * * *."

Further, on the question arising under Banking Law §200-b(2)(c) as to where the cause of action "arose", the Court of Appeals stated (A6):

> "When defendant, the issuer, repudiated the letter of credit before presentment of the draft and before expiration of the letter, it was guilty of an anticipatory breach of contract and became liable for damages

caused the beneficiary (*Foglino & Co.* v. *Webster,* 217 App. Div. 282, 297-298, mod. on other grounds, 244 N.Y. 516; *Doelger* v. *Battery Park National Bank,* 201 App. Div. 515, 521-522; *Mendelson* v. *Wechsler,* 203 N.Y.S. 197; 34 N Y Jur., Letter of Credit, §38; see Uniform Commercial Code, §5-115)."

Such repudiation took place when petitioner notified First National City Bank, its "agent" in New York City to effect reimbursement, not to make payments on the drafts as it had previously been "advised" to do (R. 167).

The foregoing disposes of all of the following cases cited by petitioner (pp. 13-16), each and every one of which involved claimed violation of the Due Process clause based on the failure, or claimed failure, to obtain the necessary underlying jurisdiction either *in personam* or *in rem*: *Hanson* v. *Denckla,* 357 U.S. 235 (1958); *McGee* v. *International Life Ins. Co.,* 355 U.S. 220 (1957); *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945); *Bank of America* v. *Whitney Bank,* 261 U.S. 171 (1923); *Harris* v. *Balk,* 198 U.S. 215 (1905). Those cases, classic jurisdiction controversies arising under the Due Process clause, cannot be the least authority in the present situation where the basic due process jurisdiction, *in rem* in character, has indisputably been obtained in the time-honored and case-sanctioned manner through attachment upon defendant's property situated within the territorial limits of the forum state, followed by service of process by publication in the manner provided for by statute. *Pennoyer* v. *Neff,* 95 U.S. 714 (1877); *Harris* v. *Balk,* 198 U.S. 215 (1905); *Louisville and Nashville Railroad* v. *Deer,* 200 U.S. 176 (1906); *Pennington* v. *Fourth National Bank,* 243 U.S. 269, 271, 272 (1917); *Security Bank* v. *California,* 263 U.S. 282, 285, 287 (1923). As pointed out in the *Pennington* case, *supra,*

moreover, bank accounts are precisely "the species of property which courts of the several States have most frequently applied in satisfaction of the obligations of absent debtors." (243 U.S. at p. 271).

Erb v. *Banco di Napoli*, 243 N.Y. 45 (1926), cited by petitioner (p. 15), has, of course, no relevance whatever since the present suit is against petitioner and not against the First National City Bank, which as depositary bank is the analogue of the Banco di Napoli in the *Erb* case. The present case is against petitioner alone, the First National City Bank's sole connection being that it is the debtor of petitioner with respect to the debt (bank deposit) locally attached to obtain the basis for an *in rem* jurisdiction.

Petitioner has also cited *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, No. 73-1121 (1975), not officially reported, and *Burt Randolph Sugar and Wrestling, Inc.* v. *Curtis Circulation Co.*, 377 F. Supp. 1055 (S.D. N.Y. 1975), but all three of those cases involved attacks on the respective attachment and replevin statutes. At bar, at no time has petitioner attacked in the New York courts the New York attachment statute under which levy and attachment of property consisting of a debt was effected in order to constitute a basis for *in rem* jurisdiction. Petitioner's sole attack in the New York courts has been on "subject-matter jurisdiction" (R. 7-13), specifically, that aspect of it that arises when the state court, construing the pertinent state statute, applies the state's own policy regarding lending its courts to the determination of disputes between nonresident parties.

B.

On the question whether the decision by the New York Court of Appeals in any way contravened the Bretton

Woods Agreement, 60 Stat. 1401 *et seq.* (thus giving rise to a question under the Federal Supremacy Clause), it is evident that it does not.

The Bretton Woods Agreement (60 Stat. 1401 *et seq.*) provides in relevant part under Section 2(b) of Article VIII:

> "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

The New York Court of Appeals correctly ruled that the within irrevocable letter of credit, even when read in its broadest sense, did not fall within the scope of the above-quoted provision, the one solely relied upon by petitioner, for the reason that the letter of credit was "not an exchange contract." (A9).

This conclusion is fortified by the fact that at the time the letter of credit was issued, every legal requirement of Uganda then in force had necessarily been complied with and the document was proper and valid in every regard. Significantly, ten days after the March 24, 1972 issuance, and on April 4, 1972, petitioner itself advised the First National City Bank in New York City that the letter of credit had been properly issued in favor of respondent Zeevi (R. 167). Such advice, so given on that date, necessarily meant that the letter of credit had been in all respects validly issued and was valid as of such April 4th date, and was hence to be complied with as a valid obligation then outstanding. After that, the irrevocable letter of credit, legal under the laws of Uganda on the date issued, had to be "cancelled" (Resp. App. 1). Such cancellation did not, in fact, take place until April 17, 1972, or at the earliest April 14, 1972 (Resp. App. 2).

Unless the irrevocable letter of credit was lawful when issued (under the Bretton Woods Agreement, or any other treaty or statutory requirement), petitioner would have been perpetrating the grossest kind of fraud on respondents, taking Hiram's Sh. 3,000,000 and giving in return a tainted, and therefore actually nonexistent and wholly worthless "irrevocable" credit.

The record shows that Bretton Woods was not referred to in any of the correspondence preceding suit as a ground for cancellation (R. 68, 150-153, 167, 174). Bretton Woods itself specifically prohibits "discriminatory currency arrangements or * * * practices." (60 Stat. 1411, Sect. 3; see, also, *ibid*, §§2(a) and 2(b). At bar, the attempted action of President Amin, directed solely at Israel and Israeli nationals (for anti-Semitic motives which the record abundantly makes clear—R. 38-41), is nothing if not discriminatory. It is astonishing that petitioner should be claiming that the within acts taken by the Uganda Government were "imposed consistently with" and are within the protection of the Bretton Woods Agreement, an agreement designed and adopted precisely to bar discriminatory practices.

C.

Petitioner contends that the decision of the New York Court of Appeals was contrary to the thoroughly accepted act of state doctrine as enunciated in numerous decisions of this Court.

There is no dispute or controversy as to the scope of that doctrine, it having been early and authoritatively enunciated in *Underhill* v. *Hernandez*, 168 U.S. 250 (1897), as follows:

> "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts

of one country will not sit on judgment on acts of the government of another one within its own territory." (FULLER, *Ch. J.*, 168 U.S. at page 252).

The doctrine is not applicable here because this case involves the debt owing by the First National City Bank to petitioner, the attachment of which debt provided the basis for *in rem* jurisdiction exercised by the New York courts under the state statute, CPLR §§6201 *et seq.*, for such cases made and provided. That debt is "located" within the territorial limits of the State of New York, and not within the territorial limits of the country of Uganda, since New York, and not Uganda, alone has the power to enforce and collect it. *Security Bank* v. *California*, *supra*, 263 U.S. 282, 285 (1923); *Pennington* v. *Fourth National Bank*, *supra*, 243 U.S. 269 (1917). Conclusive on the point that New York has such power, is that in accordance with the New York statute covering such matters, the debt has been actually attached in New York and is presently *in custodia legis* in the State of New York awaiting the ultimate disposition of this case.

Petitioner cites *United States* v. *Pink*, 315 U.S. 203 (1942) and *United States* v. *Belmont*, 301 U.S. 324 (1937), but those cases are wholly distinguishable, being instances of actual conflict between federal and state policy where the federal government in the proper conduct of its foreign relations has specifically adopted a public policy vis-a-vis a foreign government with which federal policy the purported state policy is in conflict. Concerning any supposed federal policy intimated by petitioner, what the New York Court of Appeals stated in the wholly opposite case of *Gonzalez* v. *Industrial Bank (of Cuba)*, *supra*, 12 N.Y. 2d 33 (1962), is fully applicable (*Per Curiam*, p. 39): "There being no present policy of the executive branch of the United States Government requiring acquiescence in the

confiscatory acts of the Cuban Government, the well-known policy of this State against such acquiescence is operative."

Petitioner cites in its petition (pp. 20-21) *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953), and *Home Insurance Co.* v. *Dick*, 281 U.S. 397 (1930), *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926), and *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918), but these cases are all so clearly inapplicable as not to require comment.

D.

Petitioner contends that the choice by the New York Court of Appeals of the New York Law over the Uganda Law in determining the merits of the case violates the federal law, specifically, the Due Process clause of the Fourteenth Amendment.

It is submitted, however, that as has already been indicated (page 3, *supra*), the correct choice of law by the forum state is not at all, and never has been, a question arising under the federal constitution, Due Process clause or any other. The considerations of state law the Court of Appeals had in mind in choosing the New York Law over the Uganda Law in arriving at its decision on the merits, are well stated in its opinion, as follows (A6):

> "We come now to the question of the choice of law. '[T]he rule which has evolved clearly in our most recent decisions is that the law of the jurisdiction having the greatest interest in the litigation will be applied and that the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict' (*International Planning* v. *Daystrom*, 24 N.Y. 2d 372, 382). New York has an overriding and paramount interest in the outcome of this litigation. * * * Since New York

has the greatest interest and is most intimately concerned with the outcome of this litigation, its laws should be accorded paramount control over the legal issues presented (cf. *Auten* v. *Auten*, 308 N.Y. 155, 161)."

II.

There Is No Conflict of Decision.

Petitioner has failed totally to point to any such conflict, or supposed conflict, of decision.

III.

There Is No Important Question of Federal Law.

The few, if any, questions of federal law that have survived the New York Court of Appeals' determination have been repeatedly settled by decisions of this Court in a manner to leave their answers in no doubt, and entirely opposed to petitioner's present contentions.

The facts themselves are sufficiently unique and special as to present a situation not likely to recur, at least in any form of federal question. The case of *Gonzalez* v. *Industrial Bank (of Cuba)*, *supra*, 12 N Y 2d 33 (1962), shows amply that such situations, should they recur, are fully disposable in accordance with the applicable state law, and not at all drawing in a federal question of any reality or substance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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